

From defiance to engagement: An evaluation of Shell's approach to conflict resolution in the Niger Delta

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Abstract

In the course of the lengthy era of military rule in Nigeria, the Shell Petroleum Development Company of Nigeria Ltd (Shell) enjoyed robust protection from the State, a scenario that largely left the unrelenting demands of the Niger Delta peoples unheeded. Over the last decade, however, Shell has gradually become responsive to the inevitable need of getting involved in State and non-State initiatives for finding sustainable peace in the Niger Delta region. At formal and informal levels, these initiatives are becoming evident although challenges remain. This essay proceeds from the premise that the Niger Delta conflict is not interminable. Extrapolating from the various efforts made by Shell towards resolving its conflicts with the peoples of the Niger Delta, this essay accentuates some of the missing links between top-down efforts and bottom-up initiatives

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in building sustainable peace in the region. Drawing from learned experiences of Shell's successes and failures as well as of Nigeria's power relations and institutional architecture, this essay contends that while compensatory gestures could play a major role in the resolution of conflicts, that approach alone cannot guarantee conflict resolution and reconciliation in the Niger Delta. The overarching outcome of this evaluation is an attempt at identifying the entry points of concerted conflict resolution strategies, with practical focus on the short-, medium- and long-term attainment of peace.

Introduction

Although conflicts and conflict resolution techniques have intrigued scholars since the ancient times of Thucydides, circa 460–395 BC (Klare 2001; Halsall 2010; Kemos 2010), scholarly interest in the environmental factors responsible for many volatile conflicts, particularly in Africa, is a relatively incipient endeavour (Dawson 2006:97; Butera and Leroy 2008).

In general, conflict describes a state of disagreement, disparity or incongruity between two or more individuals or groups engaged in the allocation or deployment of scarce goods or other resources. Logically, therefore, conflict is all about gaining a relative advantage or control in the struggle over who gets what, when, and how (Franke 2007:11). Many notable writers have posited that conflict is an intrinsic component of social relations and, as an expression of the multiplicity of interests, values, and beliefs, it could become the unavoidable determinant of development, underdevelopment, social change or social stagnation (Coser 1956:8; Omoluabi 2001:2; Olowu 2001:122–123). In some instances, non-violent disagreements spiral – and differing individuals or social groups resort to material violence in pursuit of their goals. Of course, the distribution of natural resources and the redistribution of revenues from their extraction are, as my discussion would indicate, also characterised by high conflict potential.

For upwards of the last two decades, hardly has any other topic pertaining to Nigeria generated more interest among international commentators and observers than the crisis in the Niger Delta region of the country. The recent

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out-of-court settlement agreed to by the Shell Petroleum Development Company (SPDC) with the families of the nine Ogoni activists executed in 1995 to the tune of US\$15.5m (GB£9.6m) has further heightened interest in the intentions of the transnational conglomerate and the future of peace in that region. This resort to a pecuniary approach within the overall framework of Shell's engagement with conflict resolution underpins the thrust of this essay.

Bearing in mind the overwhelming wealth of scholarly and popular literature that has been generated in relation to the Niger Delta crisis, it will serve no useful purpose to revisit the existing volumes of works. The focus of this essay is therefore rather on the significance of the transition from Shell's defiant attitude towards the profound crises in the Niger Delta to its novel active engagement with the dynamic challenges of reconciliation.

While the current rapprochement of Shell with the Ogoni people of the Niger Delta may offer an opportunity for the troubled communities to bury the hatchet and begin the work of healing old wounds, there is no mistaking the reality that more needs to be done to demilitarise the region and to restore tranquillity and development.

Shell in the Niger Delta: A panoramic survey

Although empirical works indicate that the efforts at oil prospecting in Nigeria commenced before the 1914 amalgamation of the Northern and Southern Protectorates of Nigeria, it was not until 1937, when the Royal Dutch conglomerate, Shell D'Arcy, got involved in the quest for crude oil, that exploration activities took shape in Nigeria, exclusively in the Niger Delta region (Abe and Ayodele 1986:84).

Since Shell first discovered crude oil at Oloibiri in the Niger Delta region in June 1956, it has held the largest oil exploration rights from the Nigerian government to date. In celebration of the golden jubilee of its oil export business from Nigerian shores, Shell Companies in Nigeria (2010) issued the following official statement:

In 2008, Shell and Nigeria celebrated 50 years of oil exports from the country. The first commercial export – in 1958 – was from Shell's Oloibiri field. Shell is Nigeria's oldest energy company, and has a long term and continuing commitment to the country, its people and the economy. Today Shell companies in Nigeria produce oil and gas from land and swamps in the Niger Delta and from deep-water reserves some 120 kilometres off the coast. They also operate Nigeria's largest liquefied natural gas (LNG) plant, which exports all over the world. SPDC is the largest private-sector oil and gas company in Nigeria. It is the operator of a joint venture between the government-owned Nigerian National Petroleum Corporation – NNPC (55%), Shell (30%), Elf Petroleum Nigeria Limited – a subsidiary of Total (10%), and Agip (5%). SPDC's operations in the Niger Delta are spread over 30,000 square kilometres. They include a network of more than 6,000 kilometres of flowlines and pipelines, 90 oil fields, 1,000 producing wells, 72 flowstations, 10 gas plants and two major oil export terminals at Bonny and Forcados. Although the company's operations are spread throughout the region, its footprint impacts directly in only a tiny fraction of the Niger Delta. The company is capable of producing an average of 1 million barrels of oil equivalent per day (boe/d). In 2008 production from Shell-run operations averaged over 850,000 boe/d.

While Shell is not the only transnational oil conglomerate operating in Nigeria, it is the longest and largest holder of state oil exploration concessions in the country. Despite the volatile changes in Nigerian regimes, nothing has changed the equation between the Nigerian State and Shell, the giant oil company. Little wonder that Shell has become the face of all other oil companies in Nigeria and has often had to bear allegations for wrongdoing occasioned by all the oil companies (Bisina 2001:99; Okonta and Douglas 2001:1401–1446; Olukoya 2001).

Apart from Shell, other transnational oil companies in the Niger Delta, including ChevronTexaco, Elf, Total, ExxonMobil, Agip, and Amoco, among others, were attracted to the region by the exceptionally premium Nigerian crude oil, because it needs less refining than oil from other fields. According to one account, there

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are eighteen transnational oil companies operating in Nigeria and accounting for about 99 percent of crude oil production in Nigeria (Evuleocha 2005). These companies have collectively transformed the entire Niger Delta region into the goose that lays the golden eggs of the modern State of Nigeria (Okonta and Douglas 2001:77–79). However, while so much wealth is derived from the bowels of the region, the scourge of poverty in the region is grim with people lacking basic needs for human survival, and the environment is wilfully and constantly degraded by oil companies. This was, and remains, the foundation of the intractable struggle over resources in the Niger Delta till date (Osaghae 2003; Aaron 2005). Cyril Obi (2006:13–14) captures the lopsidedness of wealth and woes in the region as follows:

Since the end of the Nigerian civil war in 1970, the struggle for resource control in the Niger Delta has been largely defined by the political economy of oil. This is because oil or petroleum has since the 1970s accounted for over 80 per cent of the revenues of the federal government, and 95 per cent of Nigeria's external earnings. Oil is therefore the fiscal basis of the Nigerian State. It is also paradoxically both a factor of unity among the competing factions of the Nigerian power elite, and a source of intense division and competition as a result of the extreme passions linked to the struggles over oil, and the inequities in the distribution of the oil surplus. In relation to the latter point, since over 70 per cent of the oil produced in Nigeria comes from the Niger Delta, the ethnic minorities of the region – alienated from the oil proceeds, feel ripped off by a homogenizing (but distant) nation-state project that feeds fat on their oil wealth, leaving them impoverished and their environment severely degraded. Therefore, their protests is [sic] against the injustice of belonging to a nation-state, Nigeria, which denies them their rights as citizens – the right to control and fully enjoy the oil wealth produced from under their lands and waters. It is this that explicates how the hegemonic nation-state project has literally come under fire in the Niger Delta. The quest of the oil minorities to control 'their' oil is thus underlined by the demand for the restructuring or decentralization of the presently over-centralized Nigerian federation.

It must be mentioned that the Niger Delta of Nigeria is one of the world's largest wetlands, covering an area of approximately 70 000 square kilometres. It comprises a number of characteristic ecological zones ranging from the sandy coastal ridge barriers, brackish or saline mangroves, fresh water permanent and seasonal swamp forest, to lowland rain forest. This area is also completely enmeshed among a number of tributaries to the main River Niger, forming along its course, streams, rivulets and canals. The tides of the Atlantic Ocean and the flood waters of the River Niger are the most influential variables in determining the hydrology of the Niger Delta. According to Shell's official position, the area is highly sensitive to changes in water quality (e.g. salinity and pollution) and quantity (e.g. flooding) (Shell Petroleum Development Company of Nigeria Limited [SPDC] 1999:5).

The population of the Niger Delta is estimated to be between seven and twelve million people, most of whom are heterogeneous. They are the Ijons (Ijaws), Isokos, Urhobos, Itsekiris, Ilajes, Ogonis, Andonis, Ibibios, Orons, Efiks, Anangs, Bekwaras, Ejaghams, Ekpeyes, Ikwerres, and many other splinter groups, spawning the eight littoral states of Nigeria (Bisina 2001; Nwajiaku 2005; Long 2007). These people depend for the most part on fishing and small-scale subsistence farming for their livelihood.

The Niger Delta is also very richly endowed with oil and gas deposits. However, unsustainable industrial activities such as chemical, manufacturing, and the oil and gas industries, especially the last, have combined to exacerbate the stress on the already fragile natural environment. A first time visitor to the Niger Delta region will need no further evidence of the roots of the conflict in the region as vast tell-tale signs abound: severe damage to the flora and fauna of the area; marked underdevelopment; abject poverty; naked squalor; lack and neglect of basic infrastructural facilities like potable water, passable roads, and equipped hospitals. An otherwise arable land, vast farmlands have been turned into unproductive resources. The same level of wanton damage to land has been done to marine life, leading to dwindling resources for peoples whose livelihood depend on fishing. This situation is further compounded by the unwillingness of the Federal Government of Nigeria and its foreign joint venture partners to

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sincerely integrate environmental concerns into national development projects (Aka 2003:230–235).

As would be expected, the perennial failure of successive regimes in Nigeria, whether civilian or military, to translate the enormous taxes and royalties accruing from the resources lifted from the Niger Delta region into wealth generation and empowerment for the local populations soon manifested in growing resentment, restiveness, and sometimes often violent agitation among the various peoples of the Niger Delta (Aka 2003; Ecumenical Council for Corporate Responsibility [ECCR] 2010). It soon became obvious that Shell, the alter ego of transnational oil corporations operating in the Niger Delta had formed a symbiotic relationship with the Nigerian State (Donpedro and Naagbaton 1999; Frynas 2001; Olukoya 2001; Ibeanu 2002). This relationship had almost become sacrosanct.

It was in this sort of scenario that multifarious civil groups sprang up all over the Niger Delta region in the 1990s, vigorously demanding, *inter alia*, an end to the menace of dehumanisation, despoilment, destitution, devastation, and dispossession in the region (Ikelegbe 2001:440; Worika 2001:5).

Analysis of conflict and responses in the Niger Delta

From its otherwise docile position, Shell became increasingly disposed towards active response to the agitations of civil society groups in the Niger Delta, often with the overt connivance of the Nigerian State. Although in the period between 1970 and 1989, the local communities of the Niger Delta had merely articulated their grievances through incongruent and *ad hoc* protests often resulting in the blockade of access routes to oil installations, the 1990s witnessed more concerted unrests in the Niger Delta in unprecedented fashion. According to Ikelegbe (2001:438), civil society and youth groups had emerged 'as a mobilization platform of popular struggle.'

With the anti-Shell protests becoming more sporadic, pronounced and coordinated across the Niger Delta, the stage had been prepared for the collaborative agenda of the giant oil company and the Nigeria State to be fully uncovered. In an environment in which any and all protests against Shell's

injurious oil exploration activities in the Niger Delta were confronted with massive state armed response channelled towards the singular objective of repressing all dissent, the deaths, rapes, arrests, detentions and other wanton recklessness by agents of the state became the natural consequences of the patrimonial alliance between the State and Shell. By 1995, it was no longer in doubt that Shell had shelved its toga of passivity for one of active reliance on the use of brutal intimidation and repression by state forces to quell opposition to its business interests in the Niger Delta (Human Rights Watch 1999a:154–156; Ibeanu 2000:21; Obi 2001:179; Groves 2008:11–15). The relentless spate of violence and repression unleashed on the hapless peoples of the Niger Delta in the 1990s has been documented in numerous works and it serves no useful purpose revisiting the litany of records (Greenpeace International 1994; Human Rights Watch 1999b; Essential Action and Global Exchange 2000; Aaron 2005; Ikelegbe 2005).

In cause-and-effect fashion, the Nigerian state-sponsored agenda of brutal repression of opposition to the activities of transnational oil conglomerates only strengthened the growth of agitations and protests among Niger Delta communities. In quick succession, several organised and well-coordinated civil society groups with varying degrees of demands and approaches to the struggle against Shell and other conglomerates had emerged in the Niger Delta. Prominent among these were the Movement for the Survival of Ogoni Peoples (MOSOP), led by the indefatigable Kenule Saro Wiwa; the Movement for the Survival of the Ijaw (Izon) Ethnic Nationality in the Niger Delta (MOSIEND); the Movement for the Reparation of Ogbia (Oloibiri) (MORETO); Chikoko Movement; the Ijaw Youth Council (IYC); the Urhobo Foundation, and many more. These various organisations had adopted well-articulated demands often laced with a tinge of threats, against the oil companies and the patrimonial state. While MOSOP adopted the 'Ogoni Bill of Rights' in 1990, MORETO came up with the 'Charter of Demands of the Ogbia People' in 1992, MOSIEND launched the 'Izon People's Charter' in 1997, and the IYC launched its 'Kaiama Declaration' in 1998. The Ikwerre and Oron peoples also proclaimed their 'Ikwerre Rescue Charter' and 'Oron Bill of Rights', respectively, in 1999, just

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as the Urhobo Foundation published its 'Urhobo Bill of Rights' in 2002 (Pegg 2000:706; Bisina 2001:95–96; Osaghae 2003:96–98).

The new Niger Delta People's Volunteer Force (NDPVF) and the Movement for the Emancipation of the Niger Delta (MEND) later emerged as groups generally impatient with the non-violent approaches of the groups listed above. These two later groups adopted guerrilla tactics of negotiation, including kidnapping of employees of the transnational oil companies, bunkering of oil pipelines, seizure of oil rigs and installations, interruption of oil production processes, armed confrontation with state security forces, and general militarised operations (Bentley et al. 2010; ECCR 2010).

It was against this backdrop that the Nigerian State arrested environmental rights activist and MOSOP leader, Kenule Saro Wiwa, on charges of conspiracy and murder of four Ogoni chiefs. Despite the massive protestations of local and international media in opposition to the sham criminal proceedings against Saro Wiwa and eight others as well as pleas from eminent institutions and personalities, the Nigerian military junta did not hesitate to execute the nine activists in the most gruesome manner, in November 1995. The consequences of these stage-managed killings were grave for the corporate image of Shell and will remain long-lasting.

With the introduction of democratic experimentation in 1999, the popular expectations had been that tranquillity would return to the Niger Delta region after the long and repressive years of military regime. The Obasanjo administration had swiftly set up the Human Rights Violations Investigation Commission, popularly called the 'Oputa Panel', to investigate human rights violations committed in the Federal Republic of Nigeria, between 1966 and 28 May 1999. The Niger Delta communities had made very extensive presentations to the Commission. The seven-person Commission was headed by a respected Justice of the Supreme Court of Nigeria, Chukwudifu Oputa, and sat for three years, three weeks and six days. Despite the Commission's work being so meticulous and intense, the Nigerian federal government never released the report and findings of the Commission, till date. Whatever is available from the Commission's report has been through the effort of underground activists

and researchers. In this regard, the efforts of the US-based Nigerian Democratic Movement and the Nigeria-based Civil Society Forum to publish the full report of the Oputa Panel must be commended. It is noteworthy that since January 2005 when these non-governmental organisations published the report, there has been no official denial of its accuracy or authenticity.

Apart from being highly critical of all Nigeria's military governments and holding them accountable for numerous acts of gross violations of human rights, including those that occurred in the Niger Delta, it is significant, for our purposes, to note that with regard to the Niger Delta, the Oputa Panel recommended, *inter alia*, that the federal government closely monitors the social, political and environmental conditions in the region 'with the local communities playing a central role in the execution and evaluation' of development projects (National Democratic Movement 2005:65). As corollary to this, the Oputa Panel also recommended broad consultations with the civil society about Nigeria's constitutional structure, improved human rights education, a moratorium on the creation of further states and local governments to curb corruption, and the fragmentation of the political system (National Democratic Movement 2005: 64–65; United States Institute of Peace 2010).

The Obasanjo administration subsequently introduced the Niger Delta Development Commission (NDDC) Bill into the National Assembly which was eventually passed into law despite some political imbroglio in 2000. The NDDC Act debuted with a mission to right the wrongs of the past and to facilitate the swift, equal and sustainable development of the Niger Delta into a region that is prosperous, stable, regenerative and peaceful. Specifically, section 7 of the NDDC Act of 2000 conferred the following functions and powers on the NDDC:

- 7.(1) The Commission shall –
 - a. formulate policies and guidelines for the development of the Niger Delta area,
 - b. conceive, plan and implement, in accordance with set rules and regulations, projects and programmes for the sustainable development

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of the Niger Delta area in the field of transportation including roads, jetties and waterways, health, education, employment, industrialisation, agriculture and fisheries, housing and urban development, water supply, electricity and telecommunications;

- c. cause the Niger Delta area to be surveyed in order to ascertain measures which are necessary to promote its physical and socio-economic development,
- d. prepare master plans and schemes designed to promote the physical development of the Niger Delta area and the estimates of the costs of implementing such master plans and schemes;
- e. implement all the measures approved for the development of the Niger Delta area by the Federal Government and the member States of the Commission;
- f. identify factors inhibiting the development of the Niger Delta area and assist the member States in the formulation and implementation of policies to ensure sound and efficient management of the resources of the Niger Delta area,
- g. assess and report on any project being funded or carried out in the Niger Delta area by oil and gas producing companies and any other company including non-governmental organisations and ensure that funds released for such projects are properly utilised;
- h. tackle ecological and environmental problems that arise from the exploration of oil mineral in the Niger Delta area and advise the Federal Government and the member States on the prevention and control of oil spillages, gas flaring and environmental pollution,

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- i. liaise with the various oil mineral and gas prospecting and producing companies on all matters of pollution prevention and control,
- j. execute such other works and perform such other functions which in the opinion of the Commission are required for the sustainable development of the Niger Delta area and its peoples.

Despite the wide-ranging powers conferred on the NDDC, however, the 'Nigerian factor' was soon to catch up with this body as it became embroiled in personality clashes; political imbroglio; corruption among its top echelons; and nepotism, among other vices (Quaker-Dokubo 2000b:20–23; Omotola 2007:73; Aghalino 2009:57). The expectations that greeted the Obasanjo administration and its NDDC Act intervention were soon dashed.

It should be remembered that prior to the enactment of the NDDC Act, the Nigerian Army had descended on the sleepy town of Odi, in Bayelsa State, in November 1999, killing scores of civilians and destroying vast amounts of landed and personal assets in retaliation for the murder of 12 policemen by a local gang (Ikelegbe 2001:461–462). Despite on-and-off attempts at establishing peace agreements and truce thereafter, sporadic killings and kidnappings of foreign oil workers as well as government's reprisal attacks continued throughout the Obasanjo administration. A viable 'political solution' to the Niger Delta crisis has become elusive ever after.

So palpable was the failure of the Obasanjo administration that the United Nations Development Program (UNDP) (2006:9) described the region as 'suffering from administrative neglect, crumbling social infrastructure and services, high unemployment, social deprivation, abject poverty, filth and squalor, and endemic conflict'.

The slow-paced Yar'Adua administration that succeeded Obasanjo in 2007 has not evolved any cogent policy or framework that marks a shift from its predecessor. In a move that was calculated to be the master stroke of solutions, President Umar Yar'Adua in 2009 announced a blanket amnesty for all Niger Delta militants who were up in arms against the Nigerian federation, and

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of course, its collaborator oil companies. The amnesty offer came with the announcement of cash and food rewards.¹ While the amnesty offer was hailed by some as an indication of genuine government commitment to finding a solution to the crisis ravaging the Niger Delta, the unanswered question is whether amnesty alone can avail a cure for all the ills ravaging the area. It is particularly worrisome that the Nigerian government has refused to apply the international standards of decommissioning as have been witnessed in peace processes in other climes (Okolo 2009).

All in all, it has become apparent that from an onset of hard core hostility and repression, the Nigerian State has transformed into engaging the Niger Delta issue with some level of responsiveness even if such an attitude is marred by insincerity, warped planning and skewed policy action. Notwithstanding, it is safe to posit that the change of attitude by the patrimonial State went some way in re-shaping the attitude of Shell as well in the course of time.

Shell's rapprochement towards conflict resolution: A critique of strategies

While the degree of Shell's culpability in the execution of Kenule Saro Wiwa and eight others in 1995 need not becloud our discussion, it is worthy to mention that Shell embarked on an internal review of its projects and policies in the Niger Delta region after 1999. Since that time, Shell has conducted annual reviews of its community development projects and has, since 2002, been publishing its remittances to the Federal Government of Nigeria to promote transparency and accountability. Shell has openly committed itself to the elimination of gas flaring and to the effective mopping up of oil spillages. Furthermore, as a supporter of the United Nations (UN) Global Compact, Shell is contributing to UN discussions on business and human rights and permits external review of its annual Sustainability Reports (Chen 2007:21–23; Shell 2008:20–21).

1 Mail and Guardian Online. Amnesty deal in Niger-Delta. 16 August 2009. Available from: <<http://www.mg.co.za/article/2009-08-16-amnesty-deal-in-niger-delta>> [Accessed 28 February 2010].

In a marked departure from Shell's attitude in the Nigerian military years, the company has committed itself to the Voluntary Principles on Security and Human Rights. In its 2008 Sustainability Report, for instance, Shell (2008:8) averred that its

Business Principles include support for fundamental human rights. We review the human rights risks faced by our projects and operations in high-risk countries. Where we identify risks, we systematically develop action plans so that we avoid violating the rights highlighted. Our Shell-wide security standards define how we protect our people and assets, while respecting the rights of others, including local communities. These standards set strict guidelines on the use of force and armed security, and incorporate the Voluntary Principles on Security and Human Rights, which are a guide for companies in extractive industries and the energy sector.

Without doubt, Shell's current disposition towards engagement with the Niger Delta communities through the provision of healthcare facilities and services; the construction of schools and training facilities for youths and farmers; and the promotion of small-scale businesses in the Niger Delta area is commendable and yielding positive results even if paltry (Groves 2008; Chen 2007; Shell 2009).

One of the vexatious issues in the Niger Delta conflict involves the remediation of environmental damage occasioned by oil exploration activities in the region. In response to the gale of accusations against Shell, the company has repeatedly expressed its commitment to reducing the environmental and social impacts from producing oil and gas as part of its contribution to sustainable development. Currently on its website, Shell says:

We have researched and adopted a technique for cleaning up oil spills that we believe to be the most effective for the soil and climate conditions in the equatorial heat of the Niger Delta. We add nutrients that stimulate the natural microbes in the soil. These feed on the oil and break it down. In 2008, we continued our programme to clean up and remediate oil spills that happened before 2005 – completing seven more sites. By year-end we had completed 68 of the 74 outstanding pre-2005 spill sites... Wherever possible,

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local communities take part in the remedial work on paid contracts and in a number of successful projects, local youths have been employed in the cleanup process. On the whole, our investigations show that complex soil and water pollution problems are not present, but in some cases, we have found difficulty in assessing the condition of sites, because the local community prevents access. It is in nobody's interest to leave these sites as they are. We have intensified our efforts at negotiation with local communities so that we can gain access, clean up and remediate the land. We are also looking at involving local communities in monitoring facilities (Shell 2010b).²

While Shell thus frantically pursues aggressive image-laundering through print and electronic media, vigorous campaigns backed by empirical and statistical data by civil society groups and the affected communities continue to showcase Shell's claims as grossly inadequate, misdirected, narrow, and self-serving. The new-fangled Community Development Programme designed by Shell for the Niger Delta area has recently been condemned as demonstrating 'the usual lack of community consultation, top-down approach, failed projects, sporadic crises and questionably close ties to locations of company operations. Most projects appear to be less a response to priorities of communities than guided by the company's logic of providing access to locations and comfort for its staff' (Pyagbara 2010:25).

It is apparent that all of Shell's efforts still lack the basic linkage with the ordinary peoples of the Niger Delta. As Ereba and Dumpe (2010:32–35) recently established following field studies in several parts of the Niger Delta, there is a gross deficiency of transparent and credible public participation in the environmental impact assessment processes which inform Shell's activities in the region.

Even as Shell fervently continues to broadcast its commitment to human rights and sustainable development towards stability in the Niger Delta by publishing

2 Assertions similar to the above are commonplace on Shell's websites. See, for example, Shell 2010c; Sunmonu 2010.

reports detailing its operational standards and policies, corporate citizenship ideal, and its embrace of independent assessors and civil society groups, it is so that transforming management systems and developing competencies conducive to peace and solutions in the Niger Delta require considerable training, new types of recruitment, penalty and incentive systems similar to those recently recommended by the Ecumenical Council for Corporate Responsibility (ECCR 2010:5–8). The difficulties encountered by Shell in translating its corporate discourse and commitment to resolve the issues of conflict and social and environmental justice involving the Niger Delta peoples into an effective strategy at the local level can, to some extent, be explained by the following factors:

- indications that its surveillance contracts are heavily focused on its own corporate security as opposed to human security in the region;
- acceptance of corruption regarding oil spills and environmental impact assessments (EIAs);
- its failure to stop gas flaring despite all posturing and grandstanding; and
- the systemic problems of its continued use of old and rusty oil pipelines as well as heavy maximisation of oil production such that occasion intolerable risks to human beings and the environment (Ite 2004; Omeje 2006; Groves 2008; Omonisini et al. 2010; Stakeholder Democracy Network 2010).

Although Shell endeavours to deflect criticisms against its staggering tax and royalty payoffs to the Federal Government of Nigeria in contrast to the millions of Niger Delta peoples living in abject poverty and naked squalor, even as recently as in its rejoinder to the ECCR Report in February 2010 (ECCR 2010:8),³ there is a pressing need to craft a statutory method of vesting the exploration and appropriation of the resources in the Niger Delta in the communities comprising the Niger Delta themselves rather than the culture of patronage now entrenched through Shell's arbitrary donations, settlements, and funding to self-appointed elites, clandestine representatives, and bogus youth

3 The ECCR reports that 'ECCR provided Shell with this report in draft form and invited it to comment. In response, SPDC stated its view that the report is not a sufficiently complete or balanced assessment – because 'the primary and overriding authority and responsibility' for what takes place in the Niger-Delta 'rests with the state.' (ECCR 2010: 8).

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and community 'leaders'. This is at the heart of local demands and there can be no wishing such an arrangement away. For now, representative powers are being siphoned away from the ordinary people. These powers could be used to constitute institutionalised forms of popular participation that the participatory development movement is striving for. Without the mediation of representative authority, what prevails is a plurality of institutions that has become a formula for elite capture.

Finally, on this segment, the compensatory strategy adopted by Shell in making extra-judicial, self-help monetary awards to respective Niger Delta communities has opened the company to a further spate of criticisms. Although section 77 of the Nigerian Petroleum Act mandates an exploiter of oil resources to pay an owner of land 'such sums as may be a fair and reasonable compensation for any disturbance of the surface rights of such owner or occupier and for any damage done to the surface of the land upon which his prospecting or mining is being or has been carried on and shall in addition pay to the owner of any crops, economic trees, buildings or works damaged, removed or destroyed by him or by any agent or servant of his compensation for such damage, removal or destruction', the statute is silent about the yardsticks of assessing the damage *vis-à-vis* the amount to be paid. This gap has left the assessment of compensatory awards to the whims of Shell (Akpan 2010; Pyagbara 2010:24). Amnesty International has also criticised Shell's approach to compensation as 'neither transparent nor fair, leaving people to obtain what they can by negotiation' (Amnesty International 2009:71).

Similarly, while Shell labelled the US\$15.5m (GB£9.7m) it agreed to pay to the families of Kenule Saro Wiwa and the other eight Ogoni activists to stop the case instituted against Royal Dutch Shell as 'humanitarian gesture' (Shell 2009; Wuerth 2009), the gesture smacks of corporate hypocrisy and culpability in Nigeria's legendary culture of institutionalised corruption and appeasement. What more? Since the advancement of the extra-judicial largesse, Shell has not known stability beyond what predated the 'humanitarian gesture'. The payment has not ended the violent struggle between other Nigerian communities and oil companies, and the campaign of attacks on oil installations and kidnappings of oil workers continues unabatedly. There is no gainsaying the fact that the

strategy is diversionary and discriminatory and simply promotes the post-modern Nigerian ethos of aggrandisement and profligacy.

Building peace and stability in the Niger Delta: Facing the future

That divergent interests are at the centre of conflicts is a proposition with sound acceptance (Burton 1998). If conflicts are indeed all about divergent interests, it only follows that any sincere attempt at resolving them must consciously balance competing interests and not assume they will be resolved through patrimonial approaches as the compensatory system adopted by Shell, as the leading face of the transnational oil corporations in Nigeria, would suggest. The pathway to conflict resolution, reconciliation and stability in the Niger Delta is manifold and only some dimensions often overlooked are underscored at this juncture.

One critical step towards sustainable conflict resolution and stability in the Niger Delta region is to squarely place the fiscal federalism question into the discourses. All the charters of aspirations and demands drawn up by all the Niger Delta nationalities make this a primary item of purpose. Shell must therefore insist that the Nigerian federal government tackle this question headlong. Despite all the rhetoric contained in the various statutes on the issue of natural resources, the federal government has not really wanted to devolve any real power to the lower tiers of government. To secure this end, the aspirations of the various ethnic nationalities as contained in their Bills of Rights, Declarations and Charters of Demand must become central tools in collaborative peace-building ventures to be spearheaded by the Nigerian government, and incorporating transnational oil companies operating in Nigeria as well as every oil-producing community in the Niger Delta.

Furthermore, in forging credible pathways to peace and stability in the Niger Delta, a need arises for radical legislative interventions that would expunge all provisions in the Land Use Act of 1978, and all statutes relating to oil and mineral resources which vest absolute control of lands and resources in lands in the Federal Government of Nigeria. It is for this reason regrettable that the more recent Minerals and Mining Act of 2007 also retained the provision that

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has perennially infuriated Niger Delta communities, and once again represented a missed opportunity at conflict resolution.

In the same vein, Community Development Agreements (CDAs) should be incorporated into the Petroleum Industry Bill currently before the Nigerian National Assembly, to ensure development of the oil-producing communities. These CDAs should be prerequisites for the issuance of licenses to transnational oil companies as contained in section 116 of the Mineral and Mining Act of 2007.

On the part of Shell, as the alter ego of all transnational oil companies in Nigeria, this conglomerate must assume leadership by revisiting its General Business Principles of 1976 and establishing renewed and verifiable compliance with these voluntary goals. Beyond lip-service and posturing, Shell must begin to actively integrate economic, environmental and social considerations into its decision-making processes in a transparent and sincere way.

Any effort at resolving the conflict in the Niger Delta cannot shy away from the question of ethnic and national identities – as the twin questions of ethnicity and identity form the very essence of agitations (Aka 2003; Quaker-Dokubo 2000a; Osaghae 2003; Worika 2001). With the vast heterogeneity of the communities in the Niger Delta, multiple and conflicting identities present competing incentives to resist the approach adopted by Shell towards the Ogonis. What more? Assuaging the grievances of the Ogonis would appear to have assumed some air of primacy even prior to Shell's recent 'humanitarian gesture'. In the complaint brought before the African Commission on Human and Peoples' Rights (African Commission) against the government of Nigeria by Social and Economic Rights Action Centre (SERAC), a Nigerian non-governmental organisation (NGO), and the Centre for Economic and Social Rights (CESR), a US-based NGO, in March 1996, the complainants had alleged, *inter alia*, that the Nigerian government together with its oil company, the Nigerian National Petroleum Company (NNPC), acting in concert with the transnational oil conglomerate, Shell, had through protracted oil exploration activities degraded the environment and caused huge health problems for the Ogoni people without care or concern for the affected people in violation of several provisions of the African Charter on Human and Peoples' Rights (African Charter) (SERAC and CESR 1996). It

was however queer how the entire African Commission was led into confusing the Niger Delta with 'Ogoniland'. The African Commission apparently failed to note that in all the correspondence from the Nigerian government during the proceedings, the government consistently referred to 'the Niger Delta' (Olowu 2005:41). Just as the African Commission was culpable in abdicating the necessity of defining or analysing the status of the 'Ogoni communities' within the Nigerian federal context to determine their qualification as 'peoples' under the African Charter, so were the two NGOs that brought the communication equally indictable for subterfuge activism. Beyond merely listing article 21 as one of the rights allegedly violated, the communication presenters neither raised a head of argument particularising the violation nor canvassed oral arguments to establish that the 'Ogoni communities' were so distinct and particularly affected as to be entitled to the 'exclusive interest' emphasised in article 21(1) of the African Charter.

The conflict in the Niger Delta region has become oversimplified into an Ogoni conflict. Nothing can be further from the realities than this. International scholarship has also persistently and unfortunately laboured under this unmistakable misconception and misrepresentation.⁴

In his analysis of oil politics in Nigeria, Watts emphasised the role of both States and transnational oil companies in reinforcing social identities. To Watts (2005:54),

the presence and activities of the oil companies...constitute a challenge to customary forms of community authority, inter-ethnic relations, and local state institutions principally through the property and land disputes that are engendered, via forms of popular mobilization and agitation. These political struggles are animated by the desire to gain access to (i) company rents and compensation revenues, and (ii) federal petrorevenues by capturing rents, (often fraudulently) through the creation of new regional and/or local state institutions.

4 As a pointer, virtually all scholarly literature on *SERAC's Case* use 'Ogoni' in the shortened title of the case. Indeed, the petition exclusively alleged violations of the rights of the 'Ogoni communities' and not that of the millions of other peoples in the Niger Delta area.

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For purposes of records and further empirical studies, the 'Ogonis' constitute a mere fraction of the Niger Delta region of Nigeria which traverses some eight coastal states of the Nigerian federation. Without mincing words, therefore, Shell's outreach to the Ogonis via the out-of-court settlement in the Saro Wiwa et al. court case represents a drop in a mighty ocean of conflicts and rather than assuage emotive feelings, the 'humanitarian gesture' might only have deepened the sentiments of animosity, hostility and alienation long felt by the numerous competing peoples, clans, nationalities and groups in the Niger Delta who had suffered human and pecuniary losses in the past.

To this end, joint negotiation forums consisting of genuine community representatives, ordinary peasants, skilled professionals and knowledgeable government officials must aggregate equitable, all-inclusive frameworks of determining and appropriating community projects, with transparent tender mechanisms and risk management systems.

The conflict in the Niger Delta continues to challenge the Nigerian government, the transnational oil companies, the ethnic nationalities and the international community. While the international community may have deferred to the Nigerian government's assertion that the Niger Delta crisis is an internal affair, the global community nonetheless also has a stake in resolving this protracted conflict. The international community is therefore not without a responsibility in this solution-seeking venture. The industrial States of the West should impose an embargo on all military aid to Nigerian armed forces and military equipment trade with Nigeria until all human rights violations in the Niger Delta are prosecuted and redressed or, at least, until the recommendations of the Oputa Panel of 2002, as already highlighted, are revisited and implemented.

Conclusion

Suggestions towards conflict resolution and peace in the Niger Delta have been as varied as the number of authors. This essay has explored various dimensions to the Niger Delta conflict, raising particular concerns about the compensatory approach adopted by Shell to its resolution and reconciliation.

While the compensatory approach has its definite short-term advantages, this essay considered the resolution of the multifaceted and protracted conflicts in the Niger Delta as demanding holistic approaches. The essay has identified matters that should be paramount in institutionalising legal and policy pathways to resolving the Niger Delta conflict as it is one crisis that cannot be resolved outside the larger Nigerian question.

Far from being an *ex cathedra* pronouncement on all the dynamics that should inform the attainment of tranquillity and stability in the Niger Delta, this essay would have served its purpose if it stimulates further intellectual enquiry.

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